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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,477	07/18/2003	Robert L. Fischer	023070-090740US	4550
20350	7590	11/04/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			COLLINS, CYNTHIA E	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,477

Applicant(s)

FISCHER ET AL.

Examiner

Cynthia Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 18, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-89 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, 16-29, 34-59, 64-74 and 79, drawn to a method of introducing into a plant an expression cassette containing an *ANT* nucleic acid that is homologous to the *Arabidopsis thaliana* *ANT* nucleic acid of SEQ ID NO:1, classified in class 800, subclass 290, for example.
- II. Claims 1-7, 12-15, 16-25, 30-55, 60-70, 75-79 and 85-89, drawn to a method of introducing into a plant an expression cassette containing an *ANT* nucleic acid that is homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4, and to an isolated nucleic acid molecule that is homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4, classified in class 536, subclass 23.6, for example.
- III. Claims 80-84, drawn to a method of introducing into a plant an expression cassette containing an *ANT* promoter operably linked to a heterologous polynucleotide, and to an isolated nucleic acid comprising an *ANT* promoter sequence, classified in class 536, subclass 24.1, for example.

The inventions are distinct, each from the other because of the following reasons:

Invention I and inventions II-III are distinct inventions. The method steps of invention I do not employ the isolated nucleic acid molecule of invention II (an isolated nucleic acid molecule homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4) or the isolated nucleic acid molecule of invention III (an isolated nucleic acid molecule comprising an *ANT* promoter sequence). The method of invention I utilizes a material (an expression cassette

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containing an *ANT* nucleic acid that is homologous to the *Arabidopsis thaliana* *ANT* nucleic acid of SEQ ID NO:1) different from that utilized to practice the method of invention II (an expression cassette containing an *ANT* nucleic acid that is homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4) and different from that utilized to practice the method of invention III (an expression cassette containing an *ANT* promoter operably linked to a heterologous polynucleotide).

Invention II and invention III are distinct inventions. The product of invention II (an isolated nucleic acid molecule that is homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4) differs in both structure and function from the product of invention III (an isolated nucleic acid comprising an *ANT* promoter sequence). The method steps of invention II do not employ the isolated nucleic acid molecule of invention III (an isolated nucleic acid molecule comprising an *ANT* promoter sequence). The method of invention II utilizes a material (an expression cassette containing an *ANT* nucleic acid that is homologous to the *Brassica napus* *ANT* nucleic acid of SEQ ID NO:4) different from that utilized to practice the method of invention III (an expression cassette containing an *ANT* promoter operably linked to a heterologous polynucleotide).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on (571) 272-0745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cynthia Collins
Primary Examiner
Art Unit 1638

CC



11/2/05